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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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In the Matter of

American Society of Travel Agents, Inc.

and

Joseph L. Galloway, Complainants

v.

United Airlines, et al., Respondents

Docket OST 99-6410 - 7

ANSWER OF
TRANS WORLD AIRLINES, INC.

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**ANSWER OF
TRANS WORLD AIRLINES, INC.**

The American Society of Travel Agents and its Chairman have filed a complaint against 20 airlines, including TWA, about the recent round of commission cuts that started with United's announcement on October 7, 1999. The complaint alleges (p. 24) that airlines have engaged in an unfair method of competition in air transportation, or the sale thereof, by reducing travel agent commission rates from eight to five percent, and requests that the Department order carriers to cease and desist immediately from continuing such practices. TWA hereby answers and requests that the Complaint be dismissed. ASTA has made no claim of concerted action, and has failed to overcome clear legal precedent, established in both DOT and court cases, that have clearly held

that agents do not compete with airlines, but are true agents, subject to the direction and control of their airline principals. In support of its answer, TWA states as follows:

1. Despite all the verbiage about the statutory framework and economic background of the complaint, ASTA's objections boil down to one paragraph:

“Armed with motive and opportunity, the airlines are now embarked on a campaign to eliminate or at the least severely impair the public's access to travel agents. That course of conduct has substantially reduced, and now threatens to eliminate, competition in the market for travel services and to injure consumer welfare.” (pp. 10-11)

There is much that is in error in this statement.

2. First, ASTA has not shown any concerted action among the carriers in reducing travel agent commissions. Throughout its pleading, it refers to “the airlines” without any attempt to relate the actions of any individual airline defendant in this proceeding to the activities about which it complains. In fact, the actions of the various carriers are the natural result of the competitive marketplace. The travel agent system developed because it was more efficient for each carrier to appoint agents than to add hundreds of city ticket offices. However, with the emergence of electronic tickets and direct sale through the Internet, it is no longer clear that travel agents are a lower-cost and more efficient form of distribution. This is particularly true because sales through a travel agent entail not only commission cost, but also CRS booking fees, which can amount to \$14.00 for a connecting round-trip ticket. This change in market structure

inevitably puts pressure on travel agent commission costs, which must remain competitive with other forms of distribution. United may have made such an analysis of comparative costs when it cut commission expense to 5%. In that case, United's actions may have preserved a role for travel agents in the distribution structure. If travel agent costs remained higher than other methods of distribution, airlines would be under economic pressure to eliminate them entirely.

3. Once United had acted, and was followed by several other major carriers, TWA reduced commissions as a competitive response. If TWA had not acted, its cost would have been higher than those of other airlines, and it could not have remained price-competitive in air transportation. ASTA, however, lumps TWA with all the other defendants in suggesting a joint effort to eliminate travel agent competition. TWA appreciates the concerns of travel agents about the most recent round of commission reductions, but it will not continue paying higher commissions than its airline competitors.

4. Secondly, there is no basis for the claim that travel agents compete with airlines. ASTA knows full well that both the courts and the Department (and its predecessor) have held that travel agents are true agents of their airline principals, and do not compete with them. As long ago as the Competitive Marketing Investigation, Order 82-12-85, the Civil Aeronautics Board found that "[i]n writing the ticket, the travel agent acts as that particular carrier's agent on the transaction" (p. 59). The Seventh Circuit has explained in detail why such agency relationship exists:

When the case was here in 1986, we thought it tolerably clear that travel service operators are the air carriers' agents. They carry no inventory and can book space only by requesting it from the carrier's computer; air carriers set the price for each ticket (sometimes changing the allocation of seats among price and travel-date-restriction categories by the hour), produce the service, deliver it direct to travelers, and take the risk of unsold seats. Although each travel service operator (conventionally called a "travel agent", a telling phrase) works with many airlines, hotel chains, and other suppliers of travel services, this is a common form of organization. Illinois Corporate Travel, Inc. v. American Airlines Inc., 889 F.2d 751,752 (1989), cert. denied, 495 U.S. 919 (1990)

Finally, in Pacific Travel International, Inc. v. American Airlines Inc., Order 95-1-2, the

Department found that a travel agent was acting as the airline's agent:

Pacific, which was operating as American's agent, was obligated "to obey all reasonable directions" of its principal. Restatement of the Law, Second, § 385 (1). As the principal, American is entitled to impose reasonable restrictions on its agent's sales of American's services.. ."

In view of this clear precedent, ASTA is being disingenuous in continuing to argue that travel agents compete with their airline principals. TWA's commission cuts, forced upon it by a competitive marketplace, are the action of a principal establishing the compensation for its agent, and not an attack on a competitor.

SPECIFIC ADMISSIONS AND DENIALS

Having failed to number its paragraphs, and having engaged in extensive argument about alleged history, legal structure, and public benefits, ASTA has made it difficult to specifically admit or denied the allegations of its complaint. In general, the complaint makes no allegations with respect to TWA, and TWA is without knowledge to admit or deny allegations with respect to other airlines. TWA is under no obligation to admit or deny those sections of the complaint that are entirely argumentative. These include the “Statutory Framework”, “Economic Background: Travel Agents & Competition”, “Discussion”, and “Conclusion” sections of the Complaint.

1. With respect to the section of the complaint entitled “Non-compensatory Commission Policies”, the complaint makes no allegations with respect to TWA, and TWA is without knowledge to admit or deny allegations with respect to other airlines.

2. With respect to the section of the complaint entitled “The Cost Squeeze”, the complaint makes no allegations with respect to TWA, and TWA is without knowledge to admit or deny allegations with respect to other airlines. In general, this section amounts to a re-iteration of every issue that ASTA has raised with ARC over the past five years, including issues, such as SATO, that have long been resolved. There is absolutely no evidence that either the

airlines or ARC have any anticompetitive intent in requiring agencies to pay the costs of such administrative items as training and ticket stock security.

AFFIRMATIVE DEFENSES

1. Although it is a serious matter to file an enforcement complaint against any carrier, ASTA has included TWA in the caption of the complaint, without a single substantive mention of TWA in the entire body of the document'. The complaint should be dismissed as against TWA, because it fails to include a description of any specific act of TWA that can be alleged to be in violation of 49 U.S.C. § 41712.

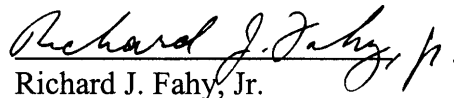
2. Neither ASTA nor Mr. Galloway have standing to file a third party enforcement complaint under 49 U.S.C. § 41712. That statute states that the persons entitled to file a complaint are "an air carrier, foreign air carrier, or ticket agent". ASTA's complaint states that it is "the leading professional travel trade organization in the world", but makes no claim that it is a ticket agent. It therefore has no standing in this litigation. The complaint does allege that Mr. Galloway has standing as the owner of a travel agency, but it is obvious that the travel agency, Trans-Continental Travel, is the "ticket agent" (the entity appointed by the airlines to sell travel

¹ In the introductory paragraph of the complaint, TWA is included in a list of carriers against whom the complaint is filed.

on their behalf). Therefore, even though Mr. Galloway is the president of ASTA, he does not have standing, in his individual capacity, as a “ticket agent” within the meaning of the statute.

WHEREFORE, TWA respectfully requests that the complaint be dismissed.

Respectfully submitted,

A handwritten signature in cursive script, reading "Richard J. Fahy, Jr.", written over a horizontal line.

Richard J. Fahy, Jr.

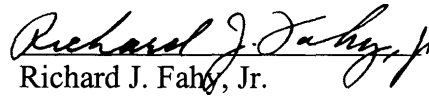
Attorney for

Trans World Airlines, Inc.

December 10, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a copy of the foregoing document upon all persons named on the attached service list by causing copies thereof, postage prepaid, to be mailed to each of them.


Richard J. Fahy, Jr.

December 10, 1999

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